REMARKS

In response to the Examiner's Communication finding this applicant's amendment dated December 23, 2003 non-responsive, applicant submits this amendment.

Applicant has amended claim 1 and claim 13 to ensure that the invention elected by applicant is directed to a tower system. Claims 1 and 13 as amended and the remaining claims, it is believed are directed not to the combination of a tower system and a pickup truck but to a tower system that is mountable on and over a pickup truck cargo bed. The remaining remarks previously submitted on December 23, 2003 are repeated.

The Examiner's rejection of claims 1 – 6 and 8 – 13 under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Cowan, et al. or Stanley, and Brown is respectfully traversed.

Obviousness and Nonobvious Based on the Examiner's Rejection under 35 U.S.C. 103.

The venerable case of Graham v. Deere, 383 U.S. 1, 148 U.S.P.Q. 459 (1966) is the landmark decision by the U.S. Supreme Court as to determining obviousness. The Federal Circuit has left no doubt that obviousness is a question of law but requires answers to a series of fact questions. In the Graham case, we must inquire: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art; and (4) look at any objective evidence presented. As the Federal Circuit has held, obviousness is a questionable law to determine from all the facts. In re Geiger, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987). The Court has rejected the "obvious to experiment" approach. There must be a reasonable of suggestion in the art itself for selecting the structure used other

than knowledge learned from the applicant's disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 U.S.P.Q.2d 1529 (Fed. Cir. 1988). The true test under 35 U.S.C. 103 is not what one might contemplate but whether the references is taken as a whole would suggest the invention to one of ordinary skill in the art. Medronic, Inc. v. Cardiac Pacemakers, Inc., 721 F.2d 1563, 220 U.S.P.Q. 97 (Fed. Cir. 1983). The fact that all of the elements of the invention are old is irrelevant to the obviousness inquiry. Custom Accessories, Inc. v. Geffrey-Allan Indus., Inc., 807 F.2d 955, 1 U.S.P.Q.2d 1169 (Fed. Cir. 1986).

In employing the Graham v. Deere test to the case at hand, the Examiner has cited four different references. With respect to analogous art, the presumption is that the person of ordinary skill, though imaginary, is presumed to have been aware of all arts reasonably pertinent to the particular problem confronting the actual inventor at the time. In re Raynes, 7 F.3d 1037, 28 U.S.P.Q.2d 1630 (Fed. Cir. 1993). With respect to the criteria involved in determining non-analogous or analogous art, the test involves whether the art is from the same field of endeavor regardless of the problem addressed. If the references are not within the field of the inventor's endeavor, the test then becomes whether the art is still reasonably pertinent to the particular problem with which the inventor is involved. If a reference disclosure has the same purpose as the claimed invention, and the reference relates to the same problem, then the facts would support use of the reference to determine obviousness. If it is directed to a different purpose, the inventor would have less motivation or occasion to consider it. In re Clay, 966 F.2d 656, 23 U.S.P.Q.2d 1058 (Fed. Cir. 1992). Of real importance is to determine the nature of the problem that the inventor was working on. Hindsight selection of pertinent art must be avoided at all cost.

Union Carbide Corp. v. American Can Company, 724 F.2d 1567, 220 U.S.P.Q. 584 (Fed. Cir. 1984).

It is improper to use the inventor's patent as the instruction book on how to reconstruct the prior art. Panduit Corp. v. Dennison Mfg., Co., 810 F.2d 1561, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987). Both the suggestion and the expectation must be found in the prior art not in the applicant's disclosure. To prevent the use of hindsight based on the invention to defeat patenability of the invention, the law requires that the Examiner show a motivation to combine the references that create the case of obviousness.

THE REFERENCES CITED

Gordon shows a truck that has an extendable ladder mounted outside the truck bed which is permanently mounted to extended vertical arms for the storage position. The structure and function of Gordon is completely different than applicant's invention. Gordon also shows a truck that has a vertically used ladder that can be horizontally stored on horizontal cross beams. There is no tower, no tower seat, and no tower support structure connected to cargo bed walls. It is difficult to determine the relevancy of this reference.

Stanley shows a mobile hunter stand that is bolted to the inside floor of a truck bed which is secured to the truck completely differently in structure than applicant's invention. Although Stanley does show a mobile hunter tower with a chair, the device in Stanley prohibits or interferes with cargo in the truck bed and, therefore, functions completely differently in its support of the stand. Stanley teaches that it is necessary to use bolts to secure the tower for stability to the floor.

Cowan, et al. shows a truck platform ladder that is completely different structurally than applicant's claimed invention. The anchors and support features are completely different.

Brown shows a vehicle carrier and vehicle ramp assembly that is used with a pickup truck to load and transport a small land vehicle such as an ATV on a truck. It is applicant's position that Brown is non-analogous art in that the crux of applicant's claimed invention relates to an observation tower that can be easily mounted on top of a truck bed. The vehicle ramp and vehicle rack in Brown have no relevance to the problem faced by and solved by applicant of supporting an elevated tower well above the truck bed. It is noted that the Brown reference is classified in class 224. None of the search areas cited in Brown involve class 182 because the search areas are completely non-analogous arts. Claim 1 of applicant's invention requires that the first and second angle beams each extend between and below the front and rear channel members and are adjustable. The structure shown in Brown includes four separate supports mounted differently. Brown fails the analogous art test.

Jorgensen shows a tractor having a ladder disposed over the tractor motor. The relevance of this reference is not very clear.

It is applicant's position that the Examiner has failed to provide a prima facie showing under 35 U.S.C. 103 of obviousness in that the references taken together do not teach or suggest applicant's claimed invention (especially as to amended claim 1) that includes first and second angle beam members that connect to the tower using front and rear channel members that can be adjusted that allow the tower to be supported on the truck bed walls while leaving the cargo bay completely open for cargo storage.

The Examiner's rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Jorgensen and Brown is respectfully traversed. Again, it is applicant's position that Gordon does not show the claimed system and is, in fact, a completely different invention. Jorgenson shows an A-frame ladder mounted on a tractor not a truck bed. The Brown reference is non-analogous art and does not suggest or teach supporting a tower structure but relates to vehicle transport. Again, the Examiner has failed to provide a prima facie showing of obviousness under 35 U.S.C. 103(a). None of the references taken together suggest nor teach applicant's amended claim 1 which is applicable to claims 1, 2 and 5 through 13. Applicant has cancelled claims 3 and 4.

Applicant submits that the claims as presented are now allowable over the art of record.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,

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